

§ 30-3.2. Definitions.

The following definitions apply in this Article:

- (1) Claims. – Includes liabilities of the decedent, whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate that arise at or after the death of the decedent, including funeral and administrative expenses, except for:
 - a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.
 - b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.
 - c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.
 - d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).
- (1a) Code. – The Internal Revenue Code in effect at the time of the decedent's death.
- (2) Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.
- (2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.
- (2b) Lineal descendant. – Defined in G.S. 29-2.
- (2c) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to property passing to surviving spouse, and (ii) claims payable out of, charged against or otherwise properly allocated to Property Passing to Surviving Spouse.
- (3) Nonadverse trustee. – Any of the following:
 - a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

- b. Any person subject to a power of removal by the surviving spouse with or without cause; or
 - c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.
- (3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse.
- (3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.
- (3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:
- a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.
 - b. Any year's allowance awarded to the surviving spouse.
 - c. Property renounced by the surviving spouse.
 - d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.
 - e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.
 - f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.
 - g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).
- If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.
- (3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property. The personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession.
- (3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.
- (3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

- a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;
- b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:
 - 1. Property held in a trust that the decedent could revoke.
 - 2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
 - 3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
 - 4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.
- c. Property held as tenants by the entirety or jointly with right of survivorship as follows:
 - 1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship is included, without regard to who contributed the property.
 - 2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with right of survivorship is included to the following extent:
 - I. All property attributable to the decedent's contribution.
 - II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.
- d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:
 - 1. Insurance on the life of the decedent.
 - 2. Accidental death benefits.
 - 3. Annuities.
 - 4. Employee benefits or similar arrangements.
 - 5. Individual retirement accounts.
 - 6. Pension or profit sharing plans.
 - 7. Deferred compensation.
 - 8. Any private or governmental retirement plan.

- e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable without reference to the decedent's death or for any period that does not in fact end before the decedent's death, except:
 - 1. Property transferred for full and adequate consideration.
 - 2. Transfers to that the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
 - 3. Transfers that became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

- f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:
 - 1. Property transferred for full and adequate consideration.
 - 2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
 - 3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

- g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:
 - 1. Property transferred for full and adequate consideration.
 - 2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
 - 3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. of this subdivision if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

- (4) Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims. (2000-140, s. 92; 2000-178, s. 2; 2001-364, s. 4; 2001-487, s. 16; 2003-296, s. 2; 2009-368, s. 1.)